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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I

vs.

JUAN BARON,

Defendant.

CR. No. 1CPC-22-0000461

MOTION TO SEAL HEARING ON
MOTION TO WITHDRAW GUILTY
PLEA; DECLARATION OF COUNSEL
and MEMORANDUM IN SUPPORT OF
MOTION

HONORABLE CATHERINE H. REMIGIO

HRG. DATE: October 7, 2024

HRG. TIME: 1:00 p.m.

MOTION TO SEAL HEARING ON MOTION TO WITHDRAW GUILTY PLEA

Defendant Juan Baron, by and through his counsel, Randall K. Hironaka, hereby moves this Honorable Court for an Order sealing the hearing on the motion to withdraw his guilty pleas entered on March 18, 2024

This motion is brought pursuant to Rule 47 of the Hawaii Rules of Penal Procedure, and is based on the Declaration of Counsel, the Memorandum in Support of Motion and any further evidence that may be presented at a hearing on this motion.

DATED: Honolulu, Hawai'i, September 27, 2024.

Respectfully submitted,

MIYOSHI & HIRONAKA, LLLC
Attorneys at Law

By: /s/ Randall K. Hironaka
RANDALL K. HIRONAKA

Attorney for Defendant
JUAN BARON

DECLARATION OF COUNSEL

I, Randall K. Hironaka, declare the following:

1. I am the attorney for Defendant Juan Baron in the above-entitled matter.
2. The facts represented in the attached Memorandum in Support of Motion are true and correct to the best of my information and belief.
3. This motion is made in good faith and not for any improper purpose or undue delay.

I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

DATED: Honolulu, Hawai'i, September 27, 2024.

/s/ Randall K. Hironaka
RANDALL K. HIRONAKA
Attorney for Defendant
JUAN BARON

MEMORANDUM IN SUPPORT OF MOTION

I. WITH RESPECT TO THE HEARING ON THE MOTION TO WITHDRAW GUILTY PLEAS, MR. BARON’S ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS, HIS RIGHT TO ATTORNEY-CLIENT CONFIDENTIALITY, AND THE WITNESS EXCLUSIONARY RULE CONSTITUTE INTERESTS WHICH SHOULD BE PROTECTED AND OUTWEIGH THE VALUE OF AN OPEN PROCEEDING

A. The public’s right of access to court proceedings is not absolute

The First Amendment to the U.S. Constitution and article I, section 4 of the Hawai‘i Constitution grant the public a right of access to court proceedings in criminal cases. The right is not limited to merely observing criminal trials. Rather, this court has indicated that the public has a constitutional right of access to criminal proceedings generally[.]

Grube v. Trader, 142 Hawai‘i 412, 422 (2018) (citing *Oahu Publ’ns Inc. v. Ahn*, 133 Hawai‘i 482, 494, 498-99 (2014); *In re The Herald Co.*, 734 F.2d 93, 98 (2d Cir. 1984) (“It makes little sense to recognize a right of public access to criminal courts and then limit that right to the trial phase of a criminal proceeding, something that occurs in only a small fraction of criminal cases.”)).

Notwithstanding these serious considerations, the public’s constitutional right of access is not absolute. In “rare and compelling circumstances,” court proceedings may be closed to protect an interest “that outweighs the value of openness.” We held in *Ahn* that, when a party or trial court seeks to prevent public access to criminal proceedings or the records thereof, both procedural and substantive requirements must be satisfied to overcome the right of public access.

Trader at 423 (citing *Ahn* at 495-97 (quoting *Honolulu Advertiser, Inc. v. Takao*, 59 Haw. 237, 238 (1978); *Press-Enter. Co. v. Superior Court of Cal., Riverside Cty. (Press-Enter. Co. I)*, 464 U.S. 501, 510 (1984)); cf. *In re Knight Pub. Co.*, 743 F.2d 231, 234 (4th Cir. 1984) (“Nonetheless, there is a strong presumption in favor of openness.”)).

B. Procedural Requirements

[The] procedural prerequisites to entry of an order closing a criminal proceeding to the public are (1) those excluded from the proceeding must be afforded a reasonable opportunity to state their objections; and (2) the reasons supporting closure must be articulated in findings.

Trader at 423 (quoting *Ahn* at 497-98 (quoting *United States v. Brooklier*, 685 F.2d 1162, 1167-68 (9th Cir. 1982))).

[These procedures] provide the essential, indeed only, means by which the public's voice can be heard. Further, the procedures ensure that the trial judge is apprised of the relevant interests at stake in order to render an informed decision, and they provide a basis for the public and reviewing courts to fairly assess the judge's reasoning, thus protecting trust in the judicial process. Under the first requirement, the public must be afforded both notice of the closure and an opportunity to be heard. The notice must be "calculated to inform the public that its constitutional rights may be implicated in a particular criminal proceeding."

Id. (citing *United States v. Criden*, 675 F.2d 550, 559 (3d Cir. 1982)).

Motions requesting closure must be docketed a reasonable time before they are acted upon. What constitutes a reasonable time is "dictated by circumstances," but it must generally be sufficient to afford the public an opportunity to intervene prior to the sealing. Once notice is provided, a hearing must be held under procedures adequate to afford the public a meaningful opportunity to object or offer alternatives to the closure. Even when the public by necessity lacks full knowledge of the basis of the motion to seal, its participation in the hearing allows the judge to consider other relevant interests and possible alternatives to sealing, thus providing a more informed basis for the determination.

Id. (citing *Brooklier*, 685 F.2d at 1168; *Criden*, 675 F.2d at 559-60; *In Re The Herald*, 734 F.2d at 102; *Phoenix Newspapers*, 156 F.3d at 949).

In the instant case, the Court is fulfilling the procedural requirements of providing notice and an opportunity to be heard. The court already provided notice to the public on Tuesday, September 24, 2024 in open court of the instant anticipated motion to seal the hearing on the motion to withdraw guilty plea. It alerted the public that any opposition responses should be filed no later than 48 hours before the hearing, currently scheduled for October 7, 2024.

“The standards promulgated by the United States Supreme Court place the responsibility on the trial court to provide notice that a compelling interest may necessitate closure of a proceeding, and afford an opportunity for the public to be heard.” *Trader* at 424 (quoting *Ahn* at 498). The procedures laid out by the Court in the instant case satisfies this responsibility.

C. Substantive Requirements

“The right of access protected by the First Amendment and article I, section 4 of the Hawai‘i Constitution can only be overcome by findings that ‘the closure is essential to preserve higher values’ and that the closure is ‘narrowly tailored’” to serve that interest. *Trader* at 424 (citing *Ahn* at 498; *Globe Newspaper Co.*, 457 U.S. at 606–07 (“Where ... the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.”)).

Thus, the substantive factors that the trial court must consider in its written findings are “(1) [the] closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.”

Trader at 424 (citing *Ahn* at 497–98).

To find that the strong presumption of openness has been overcome, a court must make a record of ‘specific findings’ that these substantive requirements have been met. The trial court may not rely on generalized concerns, but must indicate facts demonstrating compelling interest justifying the continued sealing of the documents. Additionally, the court must specifically explain the necessary connection between [openness] and the infliction of irreparable damage resulting to the compelling interest.

Trader at 424-25 (citing *Ahn* at 507; *Moana v. Wong*, 141 Hawai‘i 100, 113 (2017) (rejecting the use of vague assertions and requiring specific details when identifying “compelling

circumstances” sufficient to overcome the strong presumption that the standard time limitation in Hawai‘i Rules of Penal Procedure Rule 5(c) applies)).

The trial court’s findings, which may themselves be partially filed under seal when necessary, must contain sufficient detail for a reviewing court to evaluate each of the criteria, including the strength of the interest weighing toward closure or sealing, the potential that disclosure will cause irreparable harm to that interest, and the feasibility of protecting the interest through alternate methods.

Trader at 425 (citing *Phoenix Newspapers*, 156 F.3d at 949-50).

1. The compelling interests.

“Under the first substantive requirement to close court proceedings or seal court records, the asserted government interest served by nondisclosure must be ‘compelling.’ To qualify as compelling, the interest must be of ‘such gravity as to overcome the strong presumption’ in favor of openness.” *Trader* at 425 (citing *Ahn* at 497–98; *Moana*, 141 Hawai‘i at 111). Here, Mr. Baron identifies three compelling interests which are of such gravity as to overcome the strong presumption in favor of a public hearing.

First, attorney-client communications will be disclosed and revealed during the hearing on the motion to withdraw guilty plea. As this Honorable Court is already aware, the primary issue before the Court is whether Mr. Baron knowingly, intelligently and voluntarily gave up his significant constitutional right to a trial by jury. For the Court to determine this, it will necessarily entail delving into privileged communications with respect to whether he understood his rights and, if so, how Mr. Baron came to understand and give them up. With respect to the specific areas that will be implicated by privileged attorney-client communications, this includes, but is not limited to the following: 1) Mr. Baron’s statements to Los Angeles Police Department detectives and the likelihood of those statements being suppressed; 2) Mr. Baron’s understanding of statements such as, “You will die in prison;” 3) Mr. Baron’s understanding of, and ability to

communicate during, conversations with his prior counsel at the Oahu Community Correctional Center (“OCCC”); 4) the lack of discussions and conversations regarding the option to go trial; 5) Mr. Baron’s understanding of his options in the context of the plea negotiations process; 6) Mr. Baron’s understanding of the motion to dismiss which was filed, partially litigated and ultimately withdrawn by prior counsel; 7) Mr. Baron’s feelings with respect to having adequate time to consider the State’s counteroffer which he ultimately pled to, as well as all of his options and their viability; and 8) whether Mr. Baron felt that he had any options other than to accept the State’s counteroffer.

The second compelling interest identified by Mr. Baron herein are his rights to attorney-client loyalty and confidentiality. To be clear, this is distinguishable from the attorney-client communications privilege. Although Myles Breiner and Kyle Dowd no longer represent Mr. Baron, it is unquestioned that they continue to owe him a duty of loyalty and confidentiality. It is anticipated that an issue and evidence related to Mr. Breiner’s office’s withdrawal as Mr. Baron’s counsel may arise which is separate and apart from purely attorney-client communication. The issue implicates ethical considerations and, more importantly, their duties of loyalty and confidentiality.

The third compelling interest identified by Mr. Baron is the witness exclusionary rule. The State has made clear its intention to attempt to introduce a transcript of Mr. Baron’s interview with LAPD detectives. The State mistakenly believes this is a response to the *State v. Pedro*, a factor of the defendant “continuing to assert his innocence.” Notwithstanding the fact that this argument by the State misapprehends the factor, and also completely lacks merit, the State will attempt to introduce the transcript. Whether the statements and characterizations of the evidence in the interview is accurate or not is not the point. The point is that the interview

contains a multitude of critical and sensitive information and evidence which the State will attempt to put into the public for consumption. This will impact and have a deleterious effect on the witness exclusionary rule as the public includes all of the potential witnesses in this case. It should be noted that this particular compelling interest is held by the State as well. They should have just as much of an interest in protecting the witness exclusionary rule and the evidence and testimony which will be presented at trial.

Connections between Mr. Baron and the irreparable harms that would result from an open hearing on his motion to withdraw guilty plea have been meaningfully identified. The Court is now armed with the specific findings which are necessary to satisfy the first substantive requirement for sealing the hearing. *See Trader* at 426; *Ahn* at 504.

2. Absent closure, the compelling interests will be harmed.

“Under the second substantive requirement set forth in *Ahn*, a court must find that disclosure is sufficiently likely to result in irreparable damage to the identified compelling interest. It is not enough that damage could possibly result from disclosure, nor even that there is a ‘reasonable likelihood’ that the compelling interest will be impeded; there must be a ‘substantial probability’ that disclosure will harm the asserted interest. Further, the potential harm cannot be fleeting or readily curable through remedial measures; it must be irreparable in nature.” *Trader* at 426-27 (citing *Ahn* at 507; *Press-Enter. Co. v. Superior Court of Cal. for Riverside Cty. (Press-Enter. Co. II)*, 478 U.S. 1, 15 (1986) (rejecting the lesser “reasonable likelihood” standard as violating the First Amendment); *Phoenix Newspapers, Inc. v. U.S. Dist. Court for Dist. of Ariz.*, 156 F.3d 940, 949-50 (9th Cir. 1998)).

The hearing on the motion to withdraw guilty pleas is an evidentiary hearing. It should be abundantly clear by now that the evidence which will be presented has the potential to reveal

inconsistent and conflicting testimony. This is an obvious harm which will impact all three identified compelling interests. Should the Court grant the motion to withdraw guilty plea, significant pretrial litigation would resume. Credibility will necessarily be an issue with respect to not only pretrial motions, but Mr. Baron's trial as well. Conflicting statements from Mr. Baron's own prior attorneys in the public arena would cause irreparable damage to both the pretrial and trial litigation.

There is also irreparable harm to be caused to the legal and public interests at large with respect to attorney-client privileged communications and attorney-client loyalty and confidentiality. The attorney-client relationship, which includes privileged communications, a duty of loyalty and a duty of confidentiality, necessarily relies on non-public disclosure of those very important aspects of the relationship. Opening those matters to the public in Mr. Baron's hearing would irreparably damage not only his compelling interests, but those of the legal profession at large. Once word gets out that courts are unwilling to keep these aspects of the attorney-client relationship confidential, there will be an overall chilling effect on attorney-client relationships.

These bells cannot be un-rung. Once these compelling interests are harmed, they cannot be unharmed. They cannot be repaired. The damage to Mr. Baron will forever exist with respect to the pretrial and trial litigation. Significantly, even if the Court does not grant his motion to withdraw guilty plea, there will be harm with respect to his future hearings before the Hawaii Paroling Authority. The perception of Mr. Baron, his credibility and his character will forever be harmed should the Court refuse to seal the hearing.

3. There are no alternatives to closure which would adequately protect the compelling interests.

“Under the third substantive requirement for sealing, a court must make findings demonstrating that ‘there are no [less restrictive] alternatives to closure that would adequately protect the compelling interest.’ Even where denial of access is appropriate, it must be no greater than necessary to protect the interest justifying it. Thus, where a feasible alternative exists that would protect the compelling interest while avoiding or minimizing impairment of the public’s constitutional right of access, total sealing is inappropriate. *Trader* at 427-28 (citing *Oregonian Pub. Co. v. U.S. Dist. Court for Dist. of Or.*, 920 F.2d 1462, 1466 (9th Cir. 1990) (citing *Press-Enter. Co. II*, 478 U.S. 1, 13–14 (1986)); accord *Ahn* at 504; *United States v. Brooklier*, 685 F.2d 1162, 1172 (9th Cir. 1982). *Id.* at 1169; *Oregonian Pub. Co.*, 920 F.2d at 1467 n.1 (“The district court did not consider alternatives to closure that might protect Wolsky’s interests.... The district court might have considered redacting portions of the plea agreement, or disclosing the agreement but placing Wolsky in a witness protection program, or recommending that Wolsky be placed in protective custody while in prison.”)).

Mr. Baron cannot identify any alternatives to closure with respect to the compelling interests identified herein. He concedes that some portions of the hearing on the motion to withdraw guilty plea may not implicate one of the aforementioned compelling interests. As such, those portions could potentially be opened to the public, however, those portions would constitute only a small portion of the hearing.

II. CONCLUSION

In the instant case, there are compelling interests which will be irreparably harmed, and thus require the hearing on Mr. Baron's motion to withdraw guilty plea to be sealed.

DATED: Honolulu, Hawai'i, September 27, 2024.

Respectfully submitted,

MIYOSHI & HIRONAKA, LLLC
Attorneys at Law

By: /s/ Randall K. Hironaka
RANDALL K. HIRONAKA

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JUAN BARON